

AMENDED IN ASSEMBLY APRIL 23, 2008

AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2334

Introduced by Assembly Member Sharon Runner

February 21, 2008

An act to ~~amend Section 3000 of the Penal Code, and to amend~~ Section 6608 of the Welfare and Institutions Code, relating to parole.

LEGISLATIVE COUNSEL'S DIGEST

AB 2334, as amended, Sharon Runner. Parole: sexually violent predators.

~~Under existing law, as amended by Proposition 83 of the November 7, 2006, statewide general election, the parole period of any person found to be a sexually violent predator is tolled until that person is found to no longer be a sexually violent predator, as specified.~~

~~This bill instead would provide that for any person being evaluated as a sexually violent predator, parole shall toll from evaluation through the period of commitment, including conditional release under court monitoring, if any, as specified.~~

~~Proposition 83 permits the Legislature, by a vote of $\frac{2}{3}$ of the membership of each house and in accordance with specified procedures, to amend the provisions of the act.~~

~~This bill would therefore require a $\frac{2}{3}$ vote.~~

Existing law permits a person who has been committed as a sexually violent predator to petition the court for conditional release or an unconditional discharge, as specified. However, if a person has previously filed for a conditional release and the court determined that

the petition was frivolous or that the person's condition had not so changed that he or she would not be a danger to others, then the court is required to deny the subsequent petition, except under certain circumstances. If a court finds that either a first or subsequent petition for conditional release is based on frivolous grounds, it is required to deny the petition.

This bill would define "frivolous" for those purposes.

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 3000 of the Penal Code is amended to~~
2 ~~read:~~
3 ~~3000. (a) (1) The Legislature finds and declares that the period~~
4 ~~immediately following incarceration is critical to successful~~
5 ~~reintegration of the offender into society and to positive citizenship.~~
6 ~~It is in the interest of public safety for the state to provide for the~~
7 ~~supervision of and surveillance of parolees, including the judicious~~
8 ~~use of revocation actions, and to provide educational, vocational,~~
9 ~~family and personal counseling necessary to assist parolees in the~~
10 ~~transition between imprisonment and discharge. A sentence~~
11 ~~pursuant to Section 1168 or 1170 shall include a period of parole,~~
12 ~~unless waived, as provided in this section.~~
13 ~~(2) The Legislature finds and declares that it is not the intent of~~
14 ~~this section to diminish resources allocated to the Department of~~
15 ~~Corrections and Rehabilitation for parole functions for which the~~
16 ~~department is responsible. It is also not the intent of this section~~
17 ~~to diminish the resources allocated to the Board of Parole Hearings~~
18 ~~to execute its duties with respect to parole functions for which the~~
19 ~~board is responsible.~~
20 ~~(3) The Legislature finds and declares that diligent effort must~~
21 ~~be made to ensure that parolees are held accountable for their~~
22 ~~criminal behavior, including, but not limited to, the satisfaction of~~
23 ~~restitution fines and orders.~~
24 ~~(4) For any person being evaluated as a sexually violent predator~~
25 ~~pursuant to Article 4 (commencing with Section 6600) of Chapter~~
26 ~~2 of Part 2 of Division 6 of the Welfare and Institutions Code,~~
27 ~~parole shall toll from evaluation through the period of commitment,~~
28 ~~including conditional release under court monitoring, if any. The~~

1 ~~period during which parole is tolled shall include the filing of a~~
2 ~~petition for commitment, hearing on probable cause, trial~~
3 ~~proceedings, actual commitment, and any time spent on conditional~~
4 ~~release under court monitoring. Parole shall be tolled through any~~
5 ~~subsequent evaluation and commitment proceedings, actual~~
6 ~~commitment, and any time spent on conditional release under court~~
7 ~~monitoring.~~

8 ~~(b) Notwithstanding any provision to the contrary in Article 3~~
9 ~~(commencing with Section 3040) of this chapter, the following~~
10 ~~shall apply:~~

11 ~~(1) At the expiration of a term of imprisonment of one year and~~
12 ~~one day, or a term of imprisonment imposed pursuant to Section~~
13 ~~1170 or at the expiration of a term reduced pursuant to Section~~
14 ~~2931 or 2933, if applicable, the inmate shall be released on parole~~
15 ~~for a period not exceeding three years, except that any inmate~~
16 ~~sentenced for an offense specified in paragraph (3), (4), (5), (6),~~
17 ~~(11), (16), or (18) of subdivision (c) of Section 667.5 shall be~~
18 ~~released on parole for a period not exceeding five years, unless in~~
19 ~~either case the parole authority for good cause waives parole and~~
20 ~~discharges the inmate from the custody of the department.~~

21 ~~(2) In the case of any inmate sentenced under Section 1168, the~~
22 ~~period of parole shall not exceed five years in the case of an inmate~~
23 ~~imprisoned for any offense other than first or second degree murder~~
24 ~~for which the inmate has received a life sentence, and shall not~~
25 ~~exceed three years in the case of any other inmate, unless in either~~
26 ~~case the parole authority for good cause waives parole and~~
27 ~~discharges the inmate from custody of the department. This~~
28 ~~subdivision shall also be applicable to inmates who committed~~
29 ~~crimes prior to July 1, 1977, to the extent specified in Section~~
30 ~~1170.2.~~

31 ~~(3) Notwithstanding paragraphs (1) and (2), in the case of any~~
32 ~~offense for which the inmate has received a life sentence pursuant~~
33 ~~to Section 667.61 or 667.71, the period of parole shall be 10 years.~~

34 ~~(4) The parole authority shall consider the request of any inmate~~
35 ~~regarding the length of his or her parole and the conditions thereof.~~

36 ~~(5) Upon successful completion of parole, or at the end of the~~
37 ~~maximum statutory period of parole specified for the inmate under~~
38 ~~paragraph (1), (2), or (3), as the case may be, whichever is earlier,~~
39 ~~the inmate shall be discharged from custody. The date of the~~
40 ~~maximum statutory period of parole under this subdivision and~~

1 paragraphs (1), (2), and (3) shall be computed from the date of
2 initial parole and shall be a period chronologically determined.
3 Time during which parole is suspended because the prisoner has
4 absconded or has been returned to custody as a parole violator
5 shall not be credited toward any period of parole unless the prisoner
6 is found not guilty of the parole violation. However, the period of
7 parole is subject to the following:

8 (A) Except as provided in Section 3064, in no case may a
9 prisoner subject to three years on parole be retained under parole
10 supervision or in custody for a period longer than four years from
11 the date of his or her initial parole.

12 (B) Except as provided in Section 3064, in no case may a
13 prisoner subject to five years on parole be retained under parole
14 supervision or in custody for a period longer than seven years from
15 the date of his or her initial parole.

16 (C) Except as provided in Section 3064, in no case may a
17 prisoner subject to 10 years on parole be retained under parole
18 supervision or in custody for a period longer than 15 years from
19 the date of his or her initial parole.

20 (6) The Department of Corrections and Rehabilitation shall meet
21 with each inmate at least 30 days prior to his or her good time
22 release date and shall provide, under guidelines specified by the
23 parole authority, the conditions of parole and the length of parole
24 up to the maximum period of time provided by law. The inmate
25 has the right to reconsideration of the length of parole and
26 conditions thereof by the parole authority. The Department of
27 Corrections and Rehabilitation or the Board of Parole Hearings
28 may impose as a condition of parole that a prisoner make payments
29 on the prisoner's outstanding restitution fines or orders imposed
30 pursuant to subdivision (a) or (c) of Section 13967 of the
31 Government Code, as operative prior to September 28, 1994, or
32 subdivision (b) or (f) of Section 1202.4.

33 (7) For purposes of this chapter, the Board of Parole Hearings
34 shall be considered the parole authority.

35 (8) The sole authority to issue warrants for the return to actual
36 custody of any state prisoner released on parole rests with the
37 Board of Parole Hearings, except for any escaped state prisoner
38 or any state prisoner released prior to his or her scheduled release
39 date who should be returned to custody, and Section 3060 shall
40 apply.

1 ~~(9) It is the intent of the Legislature that efforts be made with~~
2 ~~respect to persons who are subject to Section 290.011 who are on~~
3 ~~parole to engage them in treatment.~~

4 ~~SEC. 2.~~

5 SECTION 1. Section 6608 of the Welfare and Institutions Code
6 is amended to read:

7 6608. (a) (1) Nothing in this article shall prohibit the person
8 who has been committed as a sexually violent predator from
9 petitioning the court for conditional release or an unconditional
10 discharge without the recommendation or concurrence of the
11 Director of Mental Health. If a person has previously filed a
12 petition for conditional release without the concurrence of the
13 director and the court determined, either upon review of the petition
14 or following a hearing, that the petition was frivolous or that the
15 committed person's condition had not so changed that he or she
16 would not be a danger to others in that it is not likely that he or
17 she will engage in sexually violent criminal behavior if placed
18 under supervision and treatment in the community, then the court
19 shall deny the subsequent petition unless it contains facts upon
20 which a court could find that the condition of the committed person
21 had so changed that a hearing was warranted. Upon receipt of a
22 first or subsequent petition from a committed person without the
23 concurrence of the director, the court shall endeavor whenever
24 possible to review the petition and determine if it is based upon
25 frivolous grounds and, if so, shall deny the petition without a
26 hearing. The person petitioning for conditional release and
27 unconditional discharge under this subdivision shall be entitled to
28 assistance of counsel. The person petitioning for conditional release
29 or unconditional discharge shall serve a copy of the petition on
30 the State Department of Mental Health at the time the petition is
31 filed with the court.

32 (2) A petition is frivolous, for purposes of this subdivision, if
33 it is not supported by competent and admissible evidence that
34 substantiates and corroborates the petitioner's claim that he or she
35 has so changed that he or she would not be a danger to others in
36 that it is not likely that he or she will engage in sexually violent
37 criminal behavior if placed under supervision and treatment in the
38 community.

39 (b) The court shall give notice of the hearing date to the attorney
40 designated in subdivision (i) of Section 6601, the retained or

1 appointed attorney for the committed person, and the Director of
2 Mental Health at least 30 court days before the hearing date.

3 (c) No hearing upon the petition shall be held until the person
4 who is committed has been under commitment for confinement
5 and care in a facility designated by the Director of Mental Health
6 for not less than one year from the date of the order of commitment.

7 (d) The court shall hold a hearing to determine whether the
8 person committed would be a danger to the health and safety of
9 others in that it is likely that he or she will engage in sexually
10 violent criminal behavior due to his or her diagnosed mental
11 disorder if under supervision and treatment in the community. If
12 the court at the hearing determines that the committed person
13 would not be a danger to others due to his or her diagnosed mental
14 disorder while under supervision and treatment in the community,
15 the court shall order the committed person placed with an
16 appropriate forensic conditional release program operated by the
17 state for one year. A substantial portion of the state-operated
18 forensic conditional release program shall include outpatient
19 supervision and treatment. The court shall retain jurisdiction of
20 the person throughout the course of the program. At the end of
21 one year, the court shall hold a hearing to determine if the person
22 should be unconditionally released from commitment on the basis
23 that, by reason of a diagnosed mental disorder, he or she is not a
24 danger to the health and safety of others in that it is not likely that
25 he or she will engage in sexually violent criminal behavior. The
26 court shall not make this determination until the person has
27 completed at least one year in the state-operated forensic
28 conditional release program. The court shall notify the Director
29 of Mental Health of the hearing date.

30 (e) Before placing a committed person in a state-operated
31 forensic conditional release program, the community program
32 director designated by the State Department of Mental Health shall
33 submit a written recommendation to the court stating which
34 forensic conditional release program is most appropriate for
35 supervising and treating the committed person. If the court does
36 not accept the community program director's recommendation,
37 the court shall specify the reason or reasons for its order on the
38 record. The procedures described in Sections 1605 to 1610,
39 inclusive, of the Penal Code shall apply to the person placed in
40 the forensic conditional release program.

1 (f) If the court determines that the person should be transferred
2 to a state-operated forensic conditional release program, the
3 community program director, or his or her designee, shall make
4 the necessary placement arrangements and, within 30 days after
5 receiving notice of the court's finding, the person shall be placed
6 in the community in accordance with the treatment and supervision
7 plan unless good cause for not doing so is presented to the court.

8 (g) If the court rules against the committed person at the trial
9 for unconditional release from commitment, the court may place
10 the committed person on outpatient status in accordance with the
11 procedures described in Title 15 (commencing with Section 1600)
12 of Part 2 of the Penal Code.

13 (h) If the court denies the petition to place the person in an
14 appropriate forensic conditional release program or if the petition
15 for unconditional discharge is denied, the person may not file a
16 new application until one year has elapsed from the date of the
17 denial.

18 (i) In any hearing authorized by this section, the petitioner shall
19 have the burden of proof by a preponderance of the evidence.

20 (j) If the petition for conditional release is not made by the
21 director of the treatment facility to which the person is committed,
22 no action on the petition shall be taken by the court without first
23 obtaining the written recommendation of the director of the
24 treatment facility.

25 (k) Time spent in a conditional release program pursuant to this
26 section shall not count toward the term of commitment under this
27 article unless the person is confined in a locked facility by the
28 conditional release program, in which case the time spent in a
29 locked facility shall count toward the term of commitment.